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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 160.

W. WHITEHALL FULKERSON, MARGARET FULKERSON, LEE S. FULKERSON, NAPOLEON E. BEATIE, ET AL. PLAINTIFFS IN ERROR,

vs.

SETH C. HOLMES, ANNA ISABELLA HOLMES, HARRIET A. HOLMES, WILLIAM J. HOLMES, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

FILED NOVEMBER 2, 1882.

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1 Pleas before the hon. judge of the circuit court of the United States of America for the western district of Virginia and the fourth circuit, at Abingdon, on Saturday, the 30th day of October, A. D. 1880.

Be it remembered that heretofore, to wit, at a circuit court of the United States of America continued and held for the western district of Virginia and the fourth circuit, on Saturday, the 30th day of October, A. D. 1880, came Seth C. Holmes, Anna Isabella Holmes, Harriet A. Holmes, William J. Holmes, Edward C. Holmes; William Holmes & Elizabeth, his wife; Annie Holmes, Helen P. Holmes, & John Holmes, who are citizens of the State of Pennsylvania, & William S. Whitely & Elizabeth E., his wife, formerly Elizabeth E. Holmes, who are citizens of the State of Maryland (children & heirs of John Holmes, Sr., deceased, by their attorneys, and filed their declaration against W. Whitehill Fulkerson, Margaret Fulkerson, Lee S. Fulkerson, Napoleon E. Beatie, Samuel M. Beatie, William H. Beatie, John P. Beatie, Cornelia J. Beatie, Burgoyne Beatie; Charles E. Bayler & Hattie, his wife; Judson Hatcher & Emily, his wife; Charles Dougherty, Christy Brunk, Joseph Mintick, James Graybeel, John Edmondson, Frank Edmondson, John Green, & William O'Neal, who are citizens of the State of Virginia & residents of the western district, of a plea of trespass and ejectment; which declaration and the notice and affidavit thereunder written are in the words and figures following:

2 In the Circuit Court of the United States for the 4th Judicial Circuit, at Abingdon, Va.

Seth C. Holmes, Anna Isabella Holmes, Harriet A. Holmes, William J. Holmes, Edward C. Holmes; William Holmes & Elizabeth, his wife; Annie Holmes, Helen P. Holmes, & John Holmes, who are citizens of the State of Pennsylvania, & William S. Whitely & Elizabeth E., his wife, formerly Elizabeth E. Holmes, who are citizens of the State of Maryland (children & heirs of John Holmes, Sr., deceased), who claim the land hereinafter described in fee-simple, plaintiffs, complain of W. Whitehill Fulkerson, Margaret Fulkerson, Lee S. Fulkerson, Napoleon E. Beatie, Samuel M. Beatie, William H. Beatie, John P. Beatie, Cornelia J. Beatie, Burgoyne Beatie; Charles E. Baylor & Hattie, his wife; Judson Hatcher & Emily, his wife; Charles Dougherty, Christy Brunk, Joseph Mintick, James Graybeel, John Edmondson, Frank Edmondson, John Green, & William O'Neal, who are citizens of the State of Virginia & residents of the western district, defendants, of a plea that the plaintiffs heretofore, to wit, on the 1st day of July, 1871, were possessed in fee-simple of a certain tract or parcel of land lying and being in the county of Lee, in said district, containing three thousand acres, more or less, and bounded as follows, to wit: Beginning at a poplar & crooked hickory, corner to Joseph Martin's land, & with the line thereof N. 68 E. 937 poles to a black gum & hickory, corner
3 to William Priest's land, & with the line thereof N. 77 E. 330 poles to a stake; thence, leaving said line, N. 5 W. 400 poles

to a white oak on a hill, S. 71 W. 1,320 poles to two small white oaks, S. 14 E. 400 poles, crossing the branch to the beginning, with all its appurtenances thereto belonging.

And the said plaintiffs being so possessed, the defendants afterwards, to wit, on the day & year aforesaid, at the county aforesaid, within the district aforesaid, & within the jurisdiction of said court, entered into the premises aforesaid, and unlawfully withheld from the plaintiffs the possession thereof, to the damage of the plaintiffs. Therefore they bring suit, &c., &c.

HAGAN & PRIDEMORE, AND
CAMPBELL & TRIGG,
For Plaintiff.

W. Whitehill Fulkerson & others:

Take notice that a copy of the foregoing declaration in ejectment against yourself & others will be filed in the clerk's office of the United States circuit court, held at Abingdon, in the 4th judicial circuit, on the rule day to be held on the 1st Monday in August, 1871, in which court the said ejectment suit is intended to be prosecuted.

SETH C. HOLMES,
For Himself & Other Plaintiffs.

U. S. MARSHAL'S OFFICE, HARRISONBURG, VA., *July*, 1871.

4 I hereby depute Frank H. Payne, as special deputy, to execute the process in the case of Seth C. Holmes & others *vs.* W. Whitehill Fulkerson & others, and make return in due form.

A. S. GRAY, *U. S. Marshal.*

Endorsed: Executed by serving a copy of this & notice upon all of the within-named defendants, except W. H. Beatty and Jno. P. Edmondson, on Saturday, Aug. 5th, 1871, and executed on said Beatty Aug. 7th, 1871; Jno. P. Edmonson, no inhabitant. F. H. Payne, special dep'ty U. S. M.

And on another day, to wit, at an adjourned term of the circuit court of the United States for the western district of Virginia, begun and held at Abingdon on Tuesday, the 24th day of October, 1871.

JOHN HOLMES, Sr., CHILDREN, & HEIRS, Pl't'ffs,
against
W. WHITEHILL FULKERSON, MARGARET FULKERSON, LEE S. FULKERSON, and Others, Def'ts. } In Ejectment.

This day came the defendants, by their attorneys, in the above cause, and say they are severally not guilty in manner and form as the plaintiffs in their declaration against them have alleged, and of this they severally put themselves upon the country, and the
5 plaintiffs likewise; and, on the motion of the plaintiffs, by their attorney, it is ordered that Ira Fugate, who is hereby appointed a surveyor for that purpose, do go upon the lands in controversy in this cause, after giving 10 days' notice to the parties, and survey and lay out the same, as either party may direct, and return seven plats and three reports thereof to the court.

And, on motion of the defendants, by their attorney, it is ordered that Amos Miller, who is hereby appointed a surveyor for that purpose, do go upon the lands in controversy in this cause, after giving 10 days' notice thereof to the parties, and survey and lay out the same as either party may direct, and return seven fair plats and three reports thereof to the court, and this cause is continued.

And on another day, to wit, at a circuit court of the United States continued and held for the western district of Va., at Abingdon, on Friday, the 5th day of June, in the year 1873, until which time this cause was continued:

SETH C. HOLMES, CHILDREN, & HEIRS, Plaintiffs,
against
W. WHITEHILL FULKERSEN & Others, Defendants. } In Ejectment.

The plaintiffs have leave to amend their declaration in this cause, and the defendants reserve the right to object to said amendment.

6 And on another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, at Abingdon, on Friday, the 4th day of June, 1875, until which time this cause was continued.

SETH HOLMES, *et al.*, Pl't'ffs,
vs.
WHITEHILL FULKERSEN *et al.*, Def'ts. } In Ejectment.

On this day the plaintiffs, by their attorney, suggested the death of Anna Isabella Holmes, one of the plaintiffs in this cause, and on the motion of Harriet A. Holmes and Edward C. Holmes, it is ordered that this suit be prosecuted in their names, and plaintiffs have leave to amend their declaration, & this cause is continued.

And on another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, at Abingdon, on Saturday 28th October, 1876, until which time this cause was continued.

HOLMES' CHILDREN & HEIRS *et als.*
against
W. W. FULKERSON *et als.*

This day came the parties, by their attorneys, and by consent the continuances entered in this cause on Tuesday last are set
7 aside, and by like consent leave is given the plaintiffs to file amended declaration in this cause, and the said amended declaration being filed, the defendants pleaded not guilty; to which the plaintiffs replied generally, and issue being joined thereon, this cause was continued.

Amended declaration, which is in the words and figures following:

In the Circuit Court of the United States for the 4th Judicial Circuit, held at Abingdon, Va.

Count No. 1. Harriet A. Holmes, Wm. J. Holmes & Edward C. Holmes, who are citizens [of] the State of Pennsylvania, plaintiffs, complain of W. Whitehill Fulkerson, Margaret Fulkerson, Lee S. Fulkerson, Napolean E. Beatie, Sam'l M. Beatie, Wm. H. Beatie, Jno. P. Beatie, Cornelia J. Beatie, Burgoyne Beatie, Chas. E. Baylor & Hattie, his wife; Judson Hatcher and Emily, his wife; Charles Dougherty, Christy Brunk, Joseph Minnick, James Graybeel, John Edmondson, Frank Edmondson, Jehu Green, & William O. Neal, who are citizens of the State of Virginia & residents of the western district, defendants, of a plea that the plaintiffs heretofore, to wit, on the 1st day of July, 1871, were possessed in fee-simple of a certain tract or parcel of land lying or being in the county of Lee, in said district, containing three thousand acres, more or less, and bounded as follows, to wit: Beginning at a poplar and crooked hickory,
8 corner to Joseph Martin's land, & with the line thereof N. 68 E. 397 poles to a black gum and hickory, corner to Wm. Priest's land, & with the line thereof N. 77 E. 330 poles to a stake; thence leaving said N. — 5. W. 400 poles to a white oak on a hill; S. 76 W. 1,320 poles to two small white oaks; S. 14 E. 400 poles, crossing the branch to the beginning, with all its appurtenances thereto belonging.

Count No. 2. And for this: Elizabeth E. Holmes, Annie Holmes, Helen P. Holmes, John Holmes, who are citizens of the State of Pennsylvania, plaintiffs, complain of W. Whitehill Fulkerson, Margaret Fulkerson, Lee S. Fulkerson, Napolean E. Beatie, Sam'l M. Beatie, Wm. H. Beatie, Jno. P. Beatie, Cornelia J. Beatie, Burgoyne Beatie, Charles E. Baylor & Hattie, his wife; Judson Hatcher & Emily, his wife; Charles Dougherty, Christy Brunk, Joseph Minnick, James Graybeel, Jno. Edmondson, Frank Edmondson, Jehu Green, & Wm. O. Neal, who are citizens of the State of Virginia & residents of the western district, defendants, of a plea that the plaintiffs heretofore, to wit, on the 1st day of July, 1871, were possessed in fee-simple of a certain tract or parcel of land lying and being in the county of Lee, in said district, containing three thousand acres, more or less, and bound as follows, to wit: Beginning at a poplar & crooked hickory, corner to Joseph Martin's land, & with the line thereof N. 68 E. 937 poles to a
9 black gum & hickory, corner to Wm. Priest's land, & with the line thereof N. 77 E. 330 poles to a stake; thence leaving said line N. 5 W. 400 poles to a white oak on a hill; S. 71 W. 1,320 poles to two small white oaks; S. 14 E. 400 poles, crossing the branch to the beginning, with all its appurtenances thereto belonging.

Count No. 3. And for this: Seth C. Holmes, who is a citizen of the State of Maryland, plaintiff, complains of W. Whitehill Fulkerson, Margaret Fulkerson, Lee S. Fulkerson, Napoleon E. Beatie, Sam'l M. Beatie, Wm. H. Beatie, Jno. P. Beatie, Cornelia J. Beatie, Burgoyne Beatie, Charles E. Baylor & Hattie, his wife; Judson Hatcher and

Emily, his wife; Charles Dougherty, Christy Brunk, Joseph Minnick, James Graybeel, John Edmondson, Frank Edmondson, Jehu Green, & Wm. O. Neal, who are citizens of the State of Virginia and residents of the western district, defendants, of a plea that the plaintiffs heretofore, to wit, on the 1st day of July, 1871, were possessed in fee-simple of a certain tract or parcel of land lying and being in the county of Lee, in said district, containing three thousand acres, more or less, and bounded as follows, to wit: Beginning at a poplar & crooked hickory, corner to Joseph Martin's land, and with the line thereof N. 68 E. 937 poles to a black gum & hickory, corner to William Priest's land, & with the line thereof N. 77 E. 330 poles
10 to a stake; thence, leaving said line, N. 5 W. 400 poles to a white oak on a hill; S. 71 W. 1320 poles to two small white oaks; S. 14 E. 400, crossing the branch to the beginning, with all its appurtenances thereto belonging.

Count No. 4. And for this: Wm. S. Whiteley & Elizabeth E. (now wife of W. S. Whiteley), citizens of the State of Maryland, plaintiff-, complain of W. Whitehill Fulkerson, Margaret Fulkerson, Lee S. Fulkerson, Napoleon E. Beatie, Samuel M. Beatie, Wm. H. Beatie, Jno. P. Beatie, Cornelia J. Beatie, Burgoyne Beatie, Charles E. Baylor & Hattie, his wife; Judson Hatcher & Emily, his wife; Chas. Dougherty, Christey Brunk, Joseph Minnick, James Graybeel, Jno. Edmondson, Frank Edmondson, Jehu Green, & Wm. O. Neal, who are citizens of the State of Virginia & residents of the western district, defendants, of a plea that the plaintiffs heretofore, to wit, on the first day of July, 1871, were possessed in fee-simple of a certain tract or parcel of land lying and being in the county of Lee, in said district, containing three thousand acres, more or less, and bounded as follows, to wit: Beginning at a poplar & crooked hickory, corner to Joseph Martin's land, & with the line thereof N. 68 E. 937 poles to a black gum & hickory, corner to Wm. Priest's land, & with the line thereof N. 77 E. 330 poles to a stake; thence, leaving said line, N. 5 W. 400 poles to a white oak on a hill; S. 71 W. 1,320 poles to two small white
11 oaks; S. 14 E. 400 poles, crossing the branch to the beginning, with all its appurtenances thereto belonging.

And the said plaintiffs being so possessed, the defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, within the district aforesaid, & within the jurisdiction of said court, entered into the premises aforesaid, and unlawfully withheld from the plaintiffs the possession thereof, to the damage of the plaintiffs.

Therefore they bring suit, &c., &c.

HAGAN & PRIDEMORE AND
CAMPBELL & TRIGG,
For Plaintiffs.

And on another day, to wit, at a circuit court of the United States begun and held for the western district of Virginia, in the fourth circuit, at Abingdon, on Tuesday, the 26 day of October, 1880, until which time this cause was continued.

HOLMES' CHILDREN & HEIRS, Pl't'ffs,
vs.
W. W. FULKERSON & Others, Def'ts. } Ejectment.

This day came the parties by their attorneys, and thereupon came also a jury, to wit: James C. Greenway, Robert A. Preston, George Grayham, George W. Alderson, Wm. S. Ryburn, Jack Buchanan, Walter Kelly, James Snodgrass, Wm. B. White, Jos. B. Saunders, Jacob Cassell, and John B. Guyum, all good and lawful men
12 of this judicial district, who being elected, tried, and sworn the truth to speak upon the issue joined, and by consent of parties this cause is adjourned over until ten o'clock to-morrow morning.

And on another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, in the fourth circuit, at Abingdon, on Wednesday, the 27th day of October, 1880.

HOLMES' CHILDREN & HEIRS, Pl't'fs,
vs.
W. W. FULKERSON & Others, Deft's. } Ejectment.

This day came again the parties aforesaid, by their attorneys, and the jurors sworn in this cause appeared pursuant to their adjournment on yesterday, and after some progress in the trial, the same not being concluded at the hour of adjournment, further proceedings therein were adjourned until ten o'clock to-morrow morning.

And on another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, in the fourth circuit, at Abingdon, on Thursday, the 28th day of October, 1880.

HOLMES' CHILDREN & HEIRS, Pl't'fs,
vs.
W. W. FULKERSON & Others, Def'ts. } Ejectment.

13 This day came again the parties aforesaid, by their attorneys, and the jurors sworn in this cause appeared pursuant to their adjournment on yesterday, and after some progress in the trial, the same not being concluded at the hour of adjournment, further proceeding- therein were adjourned until nine o'clock to-morrow morning.

And on another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, in the fourth circuit at Abingdon, on Friday, the 29th day of October, 1880.

HOLMES' CHILDREN & HEIRS, Pl't'ffs,
vs.
W. W. FULKERSON & Others, Def'ts, } Ejectment.

This day came again the parties aforesaid, by their attorneys, and the jurors sworn in this cause appeared pursuant to their adjourn-

ment on yesterday, and, having fully heard the testimony and arguments of counsel, retired to their room, and the hour of adjournment having arrived before they had agreed upon a verdict, the jurors aforesaid are adjourned until nine o'clock to-morrow morning.

And on another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia and the fourth circuit, at Abingdon, on Saturday, the 30th day of October, 1880.

14 HOLMES' CHILDREN & HEIRS, Pl't's,
vs.
W. W. FULKERSON & Others, Def'ts, } Ejectment.

This day came again the parties aforesaid, by their attorneys, and the jurors sworn in this cause appeared pursuant to their adjournment on yesterday, and were called over and all found to be present, retired to their room, and after some time returned into court, having agreed upon the following verdict: "We, the jury, find for the plaintiffs, Harriet A. Holmes, Wm. J. Holmes, and Edward C. Holmes, plaintiffs in the first count of the declaration, filed 28th Octo., 1876, one undivided fourth part in fee of the premises in said declaration mentioned.

And we also find for the plaintiffs, Elizabeth Holmes, Annie Holmes, Helen P. Holmes, and John Holmes, the plaintiffs in the second count in said declaration, one undivided fourth part in fee of the premises in said declaration mentioned.

And we also find for the plaintiff, Seth C. Holmes, plaintiff in the third count of said declaration, one undivided fourth part in fee of the premises in said declaration mentioned.

And we also find for the plaintiff, Elizabeth E. Whitely, the wife of William S. Whitely, the plaintiffs in the fourth count in said declaration, one undivided fourth part in fee of the premises in said declaration mentioned.

15 And we further find one cent damages.

GEORGE GRAHAM.

The defendants, by their attorneys, moved the court to set aside the foregoing verdict of the jury in this cause, and award a new trial therein. On consideration whereof the said motion was overruled.

Therefore it is considered by the court that the said plaintiffs, Harriet A. Holmes, Wm. J. Holmes, and Edward C. Holmes, plaintiffs in the first count of the declaration filed 28th Oct., 1876, recover of the defendants in fee-simple one undivided fourth part of the premises in said declaration mentioned.

And that the said Elizabeth Holmes, Annie Holmes, Helen P. Holmes, and John Holmes, the plaintiffs in the second count in said declaration mentioned, recover of the defendants one undivided fourth part in fee of the premises in said declaration mentioned.

And that the plaintiff, Seth C. Holmes, plaintiff in the third count of said declaration, recover of the defendants one undivided fourth part in fee of the premises in said declaration mentioned.

And also that the plaintiff, Elizabeth E. Whitely, the wife of William S. Whiteley, the plaintiff in the fourth count in said declaration, recover of the defendants one undivided fourth part in fee of the premises in said declaration mentioned and described, with the appurtenances, together with their damages assessed as aforesaid, and the costs of the plaintiffs by them about their suit in this behalf expended, and the said defendants in mercy, &c.

Whereupon the said plaintiffs, Harriet A. Holmes, Wm. J. Holmes, and Edward C. Holmes, pray a writ to the marshal of this court to be directed to cause them to have possession of their land aforesaid, as to which the verdict of the jury and the judgment of the court is for them against the defendants, and to the said plaintiffs it is granted.

And the said plaintiffs, Elizabeth Holmes, Annie Holmes, Helen P. Holmes, and John Holmes, pray a writ to the marshal of this court to be directed to cause them to have possession of their land aforesaid, as to which the verdict of the jury and the judgment of the court is for them against the defendants, and to the said plaintiffs it is granted.

And the said plaintiff, Seth C. Holmes, prays a writ to the marshal of this court to be directed to cause him to have possession of his land aforesaid, as to which the verdict of the jury and the judgment of the court is for him against the defendants, and to the said plaintiff it is granted.

And the said plaintiffs, Elizabeth E. Whitely, the wife of Wm. S. Whiteley, the plaintiffs in the fourth count of said declaration mentioned, pray a writ to the marshal of this court to be directed to cause them to have possession of their land aforesaid, as to which the verdict of the jury and the judgment of the court is for them against the defendants, and to the said plaintiffs it is granted, and that the defendants go thereof without day.

And on another day, to wit, at a circuit court of the United States continued and held for the western district of Virginia, in the fourth circuit, at Abingdon, on Friday the 5th day of November, 1880, until which time this cause was continued.

HOLMES' CHILDREN & HEIRS, Pl't'ff-,
vs.
W. W. FULKERSON & Others, Def'ts. } In Ejectment.

MEMORANDUM.—During the trial of this cause the defendants, by their attorneys, excepted to the opinions and actions of the court upon said trial, and tendered their bills of exceptions, which were received, signed, sealed by the court, and ordered to be made a part of the record in the cause.

And the defendants praying for a writ of error to the Supreme Court of the United States, that shall operate as a supercedeas to the judgment in this cause, it is ordered that such writ be issued by the clerk of this court as provided by law, and that the defendants, or some one for them, shall execute a supercedeas bond in the penalty of $800.00, with good and sufficient security, conditioned as the law requires.

18 And it is ordered that the execution of said judgment be suspended for sixty days, for the purpose of enabling said defendants to perfect their said writ of error and supercedeas.

19 MEMORANDUM.—On the trial of this cause the defendants, by their attorneys, tendered bills of exceptions to sundry opinions of the court given against them on the said trial, which bills were received, signed, and sealed by the court, and ordered to be made part of the record in the said cause, and are in the words following, to wit:

Be it remembered that on the trial of this cause the plaintiffs, to sustain the issue on their part, read in evidence a patent from the Commonwealth to Sam'l Young for 3,000 acres of land, dated May 7th, 1787, in the words and figures following:

Beverly Randolph, Esquire, lieutenant governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that by virtue and in consideration of two land office treasury warrants, numbers 21693 & 21849, issued the twenty-fourth day of December, one thousand seven hundred and eighty-three, there is granted by the said Commonwealth unto Samuel Young, assignee of David Anderson, a certain tract or parcel of land containing three thousand acres by survey, bearing date the twenty-ninth day of April, one thousand seven hundred and eighty-six, lying and being in the county of Washington, in Powell's
20 valley, on the waters of Martin's creek, and bounded as followeth, to wit: Beginning at a poplar and crooked hickory, corner to Joseph Martin's land, and with a line thereof, north sixty-eight degrees east nine hundred and thirty-seven poles to a black gum and hickory, corner to William Priest's land, and with a line thereof north seventy-seven degrees east three hundred and thirty poles to a stake; thence leaving said line north five degrees west four hundred poles to a white oak, on a hill, south seventy-one degrees, west thirteen hundred and twenty poles to two small white oaks, south fourteen degrees east four hundred poles, crossing a branch to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Samuel Young and his heirs, forever.

In witness whereof the said Beverly Randolph, Esq., Lieutenant Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the seventh day of May, in the year of our Lord, one thousand seven hundred and eighty-seven, and of the Commonwealth the eleventh.

BEVERLY RANDOLPH.

Endorsed: Samuel Young. 3,000 acres. Washington county. (A.) Exhibit No. 1. G. H. Samuel Young is intitled to the
21 within-mentioned tract of land. John Havie, Re. L. off.

The plaintiff then offered to read in evidence a deed from Samuel C. Young to John Holmes, dated July 12, 1819, in the words and figures following:

This indenture ,made the twelvth day of July, in the year of our Lord one thousand eight hundred and nineteen, between Samuel C. Young, of the city of New Orleans, in the State of Louisiana, in the United States of America, attorney-at-law, of the one part, and John Holmes, of the city of Philadelphia, in the State of Pennsylvania, manufacturer, of the other part, witnesseth: That the said Samuel C. Young, for and in consideration of the sum of ten thousand four hundred dollars, lawful money of the United States of America, to him at the execution of these presents by the said John Holmes well and truly paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, aliened, released, and confirmed, and by these presents doth grant, bargain, and sell, alien, release, and confirm, unto the said John Holmes, his heirs and assigns, all that certain tract, piece, or parcel of land lying and being late in the county of Washington, now in the county of Lee, in Powel's valley, on the waters of Martin's creek, beginning at a poplar and crooked hickory, corner to Joseph Martin's land,
22 and with a line thereof north sixty-eight degrees east nine hundred and thirty-seven poles to a black gum and hickory, corner to William Priest's land, and with a line thereof north seventy-seven degrees east three hundred and thirty poles to a stake; thence leaving said line north five degrees west four hundred poles to a white oak on a hill south seventy-one degrees west thirteen hundred and twenty poles, to two small white oaks south fourteen degrees east four hundred poles, crossing a branch to the beginning, containing three hundred acres of land, and being in the State of Virginia:

Being the same tract, piece, or parcel, of land which by letters patent, under the seal of the Commonwealth of Virginia, executed at Richmond on the 7th day of May, 1787, by virtue of two Treasury land warrants, numbered 21693 and 21849, was granted unto Samuel Young (father to the said Samuel C. Young, party hereto), assignee of David Anderson and his heirs, forever; and the said Samuel Young, having died intestate, leaving issue, one child only, the said Samuel C. Young, party hereto, when the same became vested in him the said Samuel C. Young, forever; together with all and singular the ways, waters, water-courses, improvements, fences, rights, liberties, privileges, hereditaments, members,
23 and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, tittle, interest, property, claim, and demand whatsoever of him, the said Samuel C. Young, in law and equity howsoever of, into, or out of the same; to have and to hold the said tract, piece, or parcel of land, hereditaments, and premises hereby granted or mentioned so to be, with the appurtenances, unto the said John Holmes, his heirs and assigns, to and for the only proper use and behoof of the said John Holmes, his

heirs and assigns, forever; and the said Samuel C. Young, for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree to and with the said John Holmes, his heirs, and assigns, by these presents that he, the said Samuel C. Young, and his heirs, all and singular the hereditaments and premises hereby granted, with the appurtenances, unto the said John Holmes, his heirs and assigns, against him, the said Samuel C. Young, and his heirs, and against all and every other person and persons whomsoever lawfully claiming or to claim by, from, or under him or them, or any of them, shall and will warrant and forever defend by these presents.

In witness whereof the said parties have interchangeably set their hands and seals hereunto. Dated the day and year first above
24 written.

SAM'L C. YOUNG. [SEAL.]

U. STATES, *E. District of Pennsylvania:*

The fifteenth day of July, A. D. 1819, before me, the subscriber, judge of the Pennsylvania district of the United States, came the above-named Samuel C. Young and acknowledged the above indenture to be his act and deed, and desired the same may be recorded as such.

Witness my hand and seal.

[SEAL.] RICHARD PETERS.

Received on the day of the date of the above indenture of the above-named John Holmes the full consideration monies above mentioned.

SAM'L C. YOUNG.

W tnesses at signing:
JOHN CRAIGE.

Sealed and delivered in the presence of us—the words "late" in the sixth and the words "now in the county of Lee" in the seventh line being first interlined—

JOHN SHAW.
JOHN CRAIGE.

Endorsed: Deed, Samuel C. Young to John Holmes, for a tract of land in Washington county, Virginia, containing 3,000 acres
25 of land. (B.) Exhibit No. 2. G. H. Recorded in the clerk's office of the county court of Lee, in book No. 7, page 401.

Teste: J. W. S. Morrison, D. C.

VIRGINIA:

At a court begun and held for Lee county, at the court-house thereof, on the 15th day of January, 1838, this indenture of bargain and sale for land between Samuel C. Young, of the one part, and John Holmes, of the other part, was admitted to record upon the certificate of Richard Peters, judge of the Pennsylvania district of the United States.

J. W. S. MORRISON, *D. C.*

To the reading of said deed the defendants objected, because there was no evidence showing that said Samuel Young was dead, or that said Samuel C. Young was his heir, or that the deed offered was the deed of Samuel C. Young.

The plaintiffs, to sustain their offer to read said deed and shew its admissibility, read to the court the depositions of Charles Bird, Frank M. Etting, John Holmes, Peter G. Fulkerson, Samuel C. Brown, Thomas P. Graham, J. V. Fulkersen, John D. Sharp, and Claiborn Anderson, in the words and figures following:

CHARLES BIRD, having been first duly sworn, deposeth and saith as follows:

I reside in Radner township, Delaware county, Pennsylvania; I am fifty years of age; my business, an employé of the Pennsylvania railroad.

26 Question by plaintiff's attorney: Who were your maternal grand parents?

Answer. John Shaw and Mary Gray Shaw. I do not remember my grandfather, John Shaw, but I remember my grandmother very well; she lived in my mother's family at the time of her death, which was about the year 1830. I remember the fact of her death.

Question by plaintiff's attorney: Where was your grandfather, John Shaw, at this time?

Answer. He was dead, to the best of my knowledge and belief. I never saw him. I have seen his portrait. He has been dead upwards of fifty years.

And further this deponent saith not.

CHAS. BIRD.

Taken 22d May, 1874.

And the said FRANK M. ETTING, having been first duly sworn, deposeth and saith as follows—that is to say:

I reside in the city of Philadelphia; am upwards of forty years of age, and a member of the Philadelphia bar, and served nine years in the army as paymaster. In the latter position it was of essential importance that I should become acquainted with handwritings, and on several occasions detected forgeries. From my long experience as a collector of manuscripts and autographs, and the incidental necessity of determining their genuineness, I consider myself

27 an expert. While I have an exemplar in my mind of the ordinary signature of Richard Peters, a former judge of the United States district court for the Pennsylvania district, I have also two original letters of Judge Peters before me, one dated in 1784, and which I found among the papers of my great grandfather, of whose estate I am trustee, and another one dated in 1817, which I also found among the papers of the party to whom it is addressed. I am persuaded I can identify the signature of Judge Peters.

The witness is here shown a deed from Samuel C. Young to John

Holmes, dated 12th day of July 1819, and acknowledged on the 15th of that month. It is marked "Exhibit A, G. H.")

Question by plaintiff's attorney: Please to say whose signature is written to the acknowledgment of this deed.

Answer. I believe it to be the signature of Judge Peters, who was for thirty-odd years judge of that court. I have no doubt that this is his signature. The acknowledgment *in* not written by Judge Peters, but the words "U. States, E. district of Pennsylvania," "fifteenth," "judge of the Pennsylvania district of the United States," in the filling up, are in the handwriting of Judge Peters, and further this deponent saith not.

FRANK M. ETTING.

Taken 22d May, 1874.

28 Doctor JOHN HOLMES, having been first duly sworn, deposeth and saith as follows:

I am upwards of sixty-three years of age. I reside at No. 412 So. Fifteenth street, in the city of Philadelphia. I have lived in Philadelphia for upwards of forty years. Previous to my moving to my present residence I lived on Schuylkill, Seventh street (now called Sixteenth street), south of or below Locust street, and previous to that on Arch street, at No. 353. My profession was medicine, but I have retired from its practice. I knew John Holmes the elder, of the city of Philadelphia. I knew him intimately; he was my wife's father. He died at Londonderry, in Ireland, while on a visit there, on the 26th July, 1834. He had lived in Philadelphia many years. John Holmes left surviving him a widow, Ann C. Holmes, who died in Philadelphia on the 30th August, 1840, and four children, Mary A. Margaretta, John, Seth C., and Elizabeth Emmeline.

Mary A. Margaretta Holmes was my wife. She was born on the 24th February, 1812. We were married on the 2d December, 1835. She died on the 11th July, 1869. My wife left four children, as follows: Anna Isabella Holmes, who was born on the 13th September, 1838, and died unmarried on the 12th of November,
29 1873; Harriet Adaline Holmes, who was born on the 24th February, 1840; William J. Holmes, born on the 20th August, 1843, and Edward C. Holmes, who was born on the 19th August, 1845. These are still living.

The second child of John Holmes was a son, John Holmes. He was born May 1st, 1815, and died on the 10th August, 1850, leaving a widow, who is now dead, and four children: Elizabeth Holmes, afterwards married to William Holmes, who died on August 17th, 1874; she survives him; she was born November 6th, 1839; Annie Holmes, born July 15th, 1843; Helen P. Holmes, born December 26th, 1844, and John Holmes, born December 6th, 1846. Elizabeth, Annie, and Helen P. are now unmarried; of John I am not certain; I have no knowledge. They all, except John, reside in Philadelphia. The third child of John Holmes was Seth C. Holmes, who now resides near Baltimore city, in Maryland. He was born on the

22d September, 1821. The fourth child was Elizabeth Emmeline Whiteley, who was born on the 12th June, 1825, and was married on December 17th, 1846, to William S. Whiteley, who now resides at Baltimore. Mrs. Whiteley is living. In giving many of these dates I have examined the family Bible of the late John Holmes, which I have here before me, and have refreshed my recollection from it as to dates which were within my own knowl-
30 edge. The births, marriages, and deaths are recorded in this Bible. Many of these entries are in the handwriting of John Holmes, the elder, with which I was familiar; the others are in the handwriting of members of the family. My own recollection corroborates many of these dates. I have no doubt of the truth and accuracy of them. I knew personally all of the persons whose names I have mentioned, and now know all who are living.

Question by plaintiff's attorney: Have you any knowledge that Mr. John Holmes owned any land in Virginia in his lifetime? If aye, state all you know about it.

Answer. I know that John Holmes in his lifetime owned a large tract of about three thousand acres of land in Virginia, in what was then Washington county. I believe it is now Lee county. The deeds for this land were in John Holmes' possession at the time of his death; they were found among his papers by the executors of his will. I saw them after his death. His executors were Seth Craige, Robert Taylor, and his son, John Holmes. They are all dead. After my marriage I went to Virginia at the request of John Holmes, one of the executors, and of the family, to examine these lands. This was in the year 1836 or 1837; it has been so long ago that I am now unable to say which. I kept a full diary of
31 that visit, but I have mislaid or lost it and cannot find it after very careful search. A circumstance which is very distinct to me now inclines me to believe it was in the year 1836, but it is possible that it was in 1837. It was in the winter, as I remember, hastening home to spend Christmas with my family, and I remember arriving on Christmas morning. Before starting on that trip John Holmes, the executor, gave me the deeds and papers of the property. There was a map and plan, two deeds, and some other documents. I took them with me to Virginia. I have seen these papers very often since; they have been in my possession and in the possession of the attorneys of the heirs in Abingdon, Virginia.

Question by plaintiff's attorney: Would you know these deeds now and be able to identify them?

Answer. I would, most certainly.

Witness is here shown two parchment deeds, one, which is marked on the back "Exhibit No. 1, G. H.," being a patent from Beverly Randolph, lieutenant governor of the Commonwealth of Virginia, to Samuel Young, assignee of David Anderson, for a tract or parcel of land containing three thousand acres in the county of Washington. It is dated the 7th day of May, 1787, and is under the lesser seal of the Commonwealth; the other, marked on the back

"Exhibit No. 2, G. H.," being an indenture — Samuel C.
32 Young to John Holmes, dated the twelfth day of July, 1819, and recorded in the clerk's office of the county of Lee, in book No. 7, page 401, reciting the previously mentioned letters patent and conveying the said three thousand acres of land.

Question by plaintiffs' attorney: Look at those two deeds and say whether you have ever seen them before?

Answer. These are the two deeds given to me at the time I have mentioned, and taken by me to Virginia. I am positive of it. I afterwards had the deed from Samuel C. Young, recorder. These two deeds have been in my possession from that time to the present time. I do not mean in my actual possession, but I could always obtain them; I had control of them. During these thirty-seven or eight years these deeds have been in my hands or in the hands of the counsel for the heirs at different times, and at one time were in the hands of William S. Whiteley, my brother-in-law; but they have always been under my control and subject to my order for their possession. The heirs had begun a suit to recover possession of the land, and I had left the deeds and papers with their lawyers. When in Virginia I went upon the land for the heirs and examined it. I met at that time Mr. Frederick D. Fulkerson and also his father,
whose name, I think, was Peter. I also met a Mr. Ewing,
33 who was a brother-in-law of Mr. Fulkerson, I think, but I am not certain. I staid at Mr. Fulkerson's house one night, and went on the land next day with both Fulkerson and Ewing. They pointed out one of the corner boundaries and showed the location of the land to me. During this visit neither these gentlemen nor any others whom I met or conversed with never made any claim to the land nor spoke of owning it. They never mentioned having taken possession of it as owners. On the contrary, they always and everwheres recognized me as representing the owners of the property, and it was spoken of and called the Holmes plantation. This I heard frequently when I went there again in 1859. I found no squatters on the place on my first visit, nor did I find any one in possession of the land or any part of it. I did not go over the whole tract.

Question by plaintiffs' attorney: Have you ever received any letters from those now claiming these lands or under whom they are claimed? If aye, please produce them.

Answer. After my return to Philadelphia from this visit I received letters on the subject of the land from those or some of those I had met. I have three now in my possession.

Witness here produces letter from Frederick D. Fulkerson to
Doct. John Holmes, dated "April the 8th, 1840," addressed
34 Doct. John Holmes, 353 Arch street, Philadelphia, Pa., and postmarked, still legible, Baltimore, Apr. 23d, marked "Exhibit No. 3, January 28th, 1875, G. H." Also letter — James Fulkerson to Doct. John Holmes, dated Rose Hill, Lee county, Va., Octo., 16th, 1846, addressed Doct. John Holmes, Schuylkill, 7th below Locust, Philadelphia, marked "Exhibit No. 4, January 18th, 1875, G. H."

Also letter — James Fulkerson to Doct. John Holmes, dated Sept. 8th, 1847, with the same address as last letter and marked "Exhibit No. 5, January 18th, 1875, G. H." 1.

Answer. These letters were received by me in 1840, 1846, and 1847 from the gentlemen whose names are subscribed thereto. They came to my residence through the mail and were delivered to me by the letter-carrier. I answered each of them, and they have been in my possession since they were received, except when given to counsel for examination. During this visit Mr. Fulkerson told me he either had, or would, I cannot remember which, made an entry on the land merely for the purpose of keeping off squatters, and not to make any claim to the property. On my second visit in 1859 Mr. Ewing told me he had made an entry on the land, but he did not consider the property his, but that of the Holmes family, and if they desired to sell it he would like to have the privilege of purchasing.

35 Question by plaintiffs' attorney: Did you ever go upon the land again? If aye, when?

Answer. I went again to Virginia in 1859. I started on the 4th October, 1859, and went on the property on the 13th October. At Jonesville I met Mr. Archilus H. Fulkerson, who then, I believe, occupied a portion of the land, and I went on the land with him. He was, I believe, a nephew of Peter Fulkerson. I also met Mr. William McDonald, Mr. C. Dougherty, and a Mr. Gibson, who called on me. I staid at Mr. Fulkerson's and Mr. Dougherty's houses. I paid the taxes while there for 1859 and a small balance due for 1856, a portion of which I had previously paid. We had always kept the taxes paid, and have continued to the present time to pay them. When I say "we" I mean the heirs. I attended to the matter for my wife while she was living, and since her death for my children. While at Abingdon on this visit I retained Mr. Campbell as counsel for the heirs to recover possession of the land from those who had entered on it. Mr. Archilus Fulkerson, whom I have mentioned, told me he considered he had no right to the property, and would give me papers to that effect, but he left home, I believe, for Missouri before I left Virginia. I think Mr. Dougherty told me he had purchased the property he occupied from one of the Mr. Fulkersons, and thought it a hard thing to have to pay for it

36 twice. I have often heard Mr. John Holmes in his lifetime speak of this Virginia property, and we have tax receipts for taxes which he paid in his lifetime.

And further this deponent saith not.

JOHN HOLMES.

Taken 18th Jan'y, 1875.

P. G. FULKERSON, a witness of lawful age, after being first duly sworn, deposes as follows:

1st Question by pl'ff: Be pleased to state your name and residence.

Answer. P. J. Fulkerson; Tazewell; Tennessee.

2d Question. State your relationship to Dr. James Fulkerson, now dec'd, formerly a resident of Tazewell, Claiborne county, Tenn.

Ans. I am a son.

3d Quest. by same: Be pleased to look at the writing which is now placed in your hands by P. Hagan, bearing date on the 10th day of October, 1846, addressed to Doct. John Holmes, and subscribed "James Fulkerson," and state from your knowledge of your father's handwriting whether you believe the said writing to be in the handwriting of your father.

Answer. I was, according to my recollection of the date of his death, seventeen years of age at that time. If I had not seen his signature among his papers since, and trusted only to my knowl-
37 edge of his hand prior to his death, I could not say that I knew his handwriting, but by comparison, or by my knowledge of his signature by papers in my hands, the signature appears to be his, as well also as the body of the letter.

4 Ques. by same: Be pleased to look at the writing which is now placed in your hands by P. Hagan, bearing date on the 8th day of Sept., 1847, addressed to Doct. John Holmes, and subscribed with the name of James Fulkerson, and state from your knowledge and recollection of your father's handwriting whether you believe this writing to be in the handwriting of your father.

Ans. My answer to this would be the same as the above.

5 Ques. by same: Be pleased to state what was the profession of your father; what is your profession; and, further, state if you have *have* seen your father's books, kept by himself, in his own handwriting, and entries made by him, and other writings by him, whereby you have got such knowledge of the character of his writing as to enable you to know his handwriting with a degree of certainty as to satisfy you that you are not mistaken.

Ans. My father was a physician. I am an attorney-at-law. I have seen the entries made upon his books, together with other papers, and from those papers, as I have before stated, the
38 signature ap-ears to be genuine.

Cross-examined:

Please state whether your foregoing statements of knowledge of the handwriting of Jas. Fulkerson, dec'd, is not alone based upon comparrison of writings purporting to be his, or whether you recognize the handwriting in the two aforesaid exhibits alone upon your knowledge of his handwriting, without resorting to comparrison.

Answer. My knowledge is based almost entirely upon the papers and books in my possession and by comparing these letters with the same.

And further this deponent saith not.

P. G. FULKERSON.

Taken 4th May, 1876.

SAM'L C. BROWN, another witness of lawful age, after being first duly sworn, deposes as follows, to wit:

Question by pl't'ffs: Be pleased to state your name, residence, and profession.

Ans. Samuel C. Brown is my name. I reside at Tazewell, Claiborne county, Tenn. By profession I am a physician.

2 Ques. by same: Be pleased to state if you were acquainted with Dr. James Fulkerson, who resided in Tazewell, Claiborne county, Tenn., at the time of his death. If so, also state if you have seen him write at home, seen his handwriting so as to enable
39 you to know his writings when you see them?

Ans. I was well acquainted with Dr. James Fulkerson up to the time of his death; have seen him write at his office, and have seen his handwriting, but not enough to enable me to recognize his handwriting without a comparison with writing that I actually knew to be his.

Ques. by same: Be pleased to look at the two letters which are now placed in your hands by P. Hagan, one of which is dated Octo. 10th, 1846, the other Sept. 8th, 1847, and each signed James Fulkerson, and addressed to Doct. John Holmes, and state, from your recollection of the handwriting of decedent, James Fulkerson, whether the said letters, or either of them, *is* in the handwriting of the said Jas. Fulkerson.

Ans. I would not have recognized the handwriting as being his without my attention was or had been called to the fact, but from my recollection of his handwriting I would give it as my opinion that the two letters referred to are his handwriting.

Cross-examined:

Please state whether you can state the year in which Dr. J. Fulkerson died.

Ans. My recollection is that he died in the winter of 1869.

40 State whether your opinion above is given mearly from a comparison of writings purporting to be Jas. Fulkerson's with the handwriting of the above letters exhibited.

Ans. My opinion above is mearly given from recollection of how his handwriting looked. I have never made any comparisons; neither have I *saw* any of his handwriting many times since his death.

Then, do I understand you in your answer upon — and examination to state that you are unwilling to swear positively or directly to the handwriting in the two said exhibits?

Ans. I am unwilling to depose positively as to the identity; the opinion I give is merely as my opinion from my recollection, and that opinion might or might not be correct.

Re-ex.:

From your recollection of the handwriting of decedent Fulkerson, what is your best belief as to the said letters?

Ans. My best belief is that the refer-ed-to letters are his handwriting.

Further this deponent saith not.

SAMUEL C. BROWN.

Taken 4th May, 1876.

THOS. P. GRAHAM, another witness of lawful age, after being first sworn, deposes as follows:

Ques. by pl't'ffs: Be pleased to state your residence and
41 whether you were acquainted with Dr. James Fulkerson during his lifetime; and, if so acquainted, be pleased to state whether you ever saw him write or saw his handwriting.

Ans. I reside in Tazewell, East Tenn.; I was acquainted with Dr. James Fulkerson; I have seen his writing, but twenty years makes a difference in handwrites.

Ques. by same: Be pleased to look at the two letters which are now placed in your hands by P. Hagan, one of which bears date "Oct. 10th, 1846;" the other "Sept. 8th, 1847," each of which is addressed to Doct. John Holmes, and is signed "James Fulkerson," and state from your recollection of the handwriting of the said James Fulkerson whether or not you believe the said letters to be in the handwriting of the said James Fulkerson.

Ans. *Answer.* I have examined the two letters above refer-ed to; to the best of my recollection they resemble Dr. James Fulkerson's handwrite.

Cross-examined:

Were you in the habit during his lifetime of frequently corresponding with him by letter?

Answer. I was not.

42 [Question.] Did you see Dr. Fulkerson sign the writings you refer to in answer to the first question on direct examination?

Ans. I did not.

Question. Did you ever call Dr. Jas. Fulkerson's attention to any handwriting purporting to be his brought to your notice and have him to acknowledge the handwriting in any such papers to be his?

Answer. I did not have any acknowledgement on either of the two exhibits *ovbe* refer-ed to.

Answer. I never did ask the question of any kind or ask a reply.

Re-ex.:

Be pleased to state whether you and James Fulkerson resided close to each other, and if you and he were related to each other by blood or marriage?

Ans. We lived in the same village and were cousins by marriage.

By same:

Be pleased to state whether you and the said Jas. Fulkerson had any dealing with each other whereby writings executed by the said Fulkerson were given to you by him, or were you engaged in any pursuit whereby you often saw the handwriting of the said Fulkerson.

Ans. I was deputy postmaster and seen letters addressed to & by Dr. Jas. Fulkerson; also was a clerk in a retail store and kept an account against Dr. James Fulkerson, and seen his writing
43 occasionally. We settled accounts once a year; he gave a note for his ac. on settlement.

By same: Then, from your recollection of his handwriting from the circumstances stated by you, do you or not believe the said letters to be the handwriting, both in body & signature, of the said Jas. Fulkerson?

Ans. I think from my best recollections *and* these two letters are his own letters and signed by him.

And further deponent saith not.

THOS. P. GRAHAM.

Taken 4th May, 1876.

JACOB FULKERSON, a witness of lawful age, being first duly sworn, deposes and says:

That he now holds in his hand a letter dated April 8th, 1840, addressed to Mr. Holmes and signed by Frederick D. Fulkerson, that Frederick D. Fulkerson is dead, that he was acquainted with his handwriting, and believes the said letter and name to be in the handwriting of said Frederick D. Fulkerson; said Fulkerson formerly resided in Lee county, Virginia, and removed from here about the year 1854—perhaps 1855.

Witness also holds in his hand a letter dated Rose Hill, Lee county, Virginia, October 10, 1846, addressed Doct. John Holmes, and is signed by James Fulkerson; has not seen the handwriting of James Fulkerson for a long time, perhaps thirty years, and his recollection of it has so faded from his memory that he cannot
44 now say whether the said letter is in the handwriting of James Fulkerson or not. Said James and Frederick Fulkerson were my brothers, and witness was once well acquainted with the handwriting of both, but better with Frederick than James, inasmuch as the latter lived in Tennessee the greater portion of his time.

And further this deponent saith not.

J. V. FULKERSEN.

Taken 22d, Feb'y 1875.

JOHN SHARPE, another witness, of lawful age, being first duly sworn, deposes & says:

Question by pl't'ff: Please state if you knew James Fulkersen, now deceased, who formerly resided in Lee county, Virginia; also if you are acquainted with his handwriting.

Answer by witness: I knew Dr. Jas. Fulkersen in his lifetime; I do not remember ever to have seen him write; I have seen letters with his name signed to them; two letters are now presented to me, dated, respectively, the one "Rose Hill, Lee county, Va., October 10th, 1846," and the other "September the 8th, 1847," addressed to "Doct. John Holmes," and signed with the name of of "James Ful-

kersen," The handwriting presents to me the same appearance of the letters I have formerly seen with his name signed to them.

And further this deponent saith not.

JOHN D. SHARP.

Taken 22d Feb'y, 1875.

45 CLAIBONE ANDERSON, another witness, of lawful age, being first duly sworn deposes and says that he was for many years well acquainted with Dr. James Fulkersen, dec'd, and who, some years before his death, resided in Lee county, having left here about the year 1852, when he removed to Tazewell, Tennessee. I do not remember ever to have seen Dr. Fulkersen write; I would not know his handwriting; two letters, which are presented to me, dated, respectively, "Rose Hill, Lee county, Va., October 10th, 1846," and "September the 8th, 1847," addressed to Dr. John Holmes, and signed with the name of James Fulkersen, I am unable to state are or are not in the handwriting of or signed by Dr James Fulkersen, for I am not sufficiently acquainted with signature or handwriting to recognize it.

And further this deponent saith not.

CLAIBORNE ANDERSON.

Taken May 18th, 1875.

The plaintiffs then read to the court the letters of Frederick D. Fulkersen and James Fulkersen, refer-ed to in John Holmes' deposition and marked Exhibits Nos. "3," "4," and "5," in the words and figures following:

APRIL THE 8, 1840.

Mr. Holmes.

SIR: I have taken this opportunity to write you a few lines.
46 I wish to know of you what you would ask for one or two hundred acres of your land at the southwest end. On this part of the land their has been an entry made 8 or 10 years ago. The gentleman that entered the land has tried to sell the entry he made, but has not yet sold. I would like to know the least you would take for the -hole survey. Their has a fellow settled on a part of your land without any authority, either by entry or any other way; he is not worth anything at all. You desired to know, if any such persons should settle on the land. Sir, I would be glad if you would send my specticles by the first opportunity you have, if you pleas-. If you have not exchanged the spectacles, I wish you would exchange them for a pair that you think would suit for me to see at a distance, if it is not to- much trouble to you; if you have not an opportunity to send them yourself to me, perhaps you could have an opportunity to send them to General Patterson's and request him to send them by the first opportunity to Col. Huston, of Tazewell, Tenn. Mr. Robert Bales, the gentleman that I expect will hand you this letter, is a respectable man; if you should not see Mr. Bales, pleas- send my spectacles as before mentioned. I can say nothing more that would interest, you except the death of my mother; she died in Oct., the

last day of the month, in the year 1838. Farther, myself,
47 and — are all well. Farther sends his best respects to you; myself likewise.

I am yours, &c.,

EREDERICK D. FULKERSON.

If you wri*ght* me, direct you letter: Lee county, Va., Rose Hill P. O.

Endorsed: Postmark, Baltimore, Md., Apr. 23.

P. S.—Doct. John Holms, 353 Arch St., Philadelphia, Pa., by Mr. Robt. Bails.

Mr. F. D. Fulkerson, Virginia, April, 1840. (F. D. F.) Exhibit A A, October 20, 1874. G. H. Exhibit No. 3. January 18th, 1875. G. H. Henry Phillips, Jr., U. S. Com.

ROSE HILL, LEE COUNTY, VA.,
Oct. 10*th*, 1846.

Doct. John Holmes.

SIR: I have been informed by Mr. Henry C. Tyler, of Jonesville, Va., that you are disposed to sell a tract of land lying along the ridge & mountain north of this settlement, & that an offer had been made of, perhaps, $400. The survey is worth more than that, & the best way for you to find the value is to take in the bids; probably you have or may have several offers. If you think proper you may acquaint me of the highest, or if you are satisfied with regard to the value please to let me know the least that you are determined to take for it. If you do not know the value there are many
48 persons who could give you an honest description & probable value—Mr. John M. Preston, Gen'l Peter Johnston, Mr. Emmet Bradley, all of Abingdon, Va.; Messrs. H. C. Tyler, Elijah Hill, John Newlan, & others, of Jonesville, Va. Please to favor me with a line in a short time.

Very respectfully, yours,

JAMES FULKERSON.

Doct. John Holmes.

N. B.—If we cannot agree on price I will accept an agency if you wish.

Endorsed: Rose Hill, Va., Oct. 16. 10.

Doct. John Holmes, Schuylkill, 7th, below Locust, Philadelphia. (J. F., No. 1.) Jas. Fulkerson, Va., 10th Oct., '46. (J. F., No. 1.) "Exhibit B. B., October, 1874." G. H. "Exhibit No. 4, January 18th, 1875. G. H." Henry Phillips, Jr., U. S. com.

SEPT. 8TH, 1847.

Doct. John Holmes.

SIR: I sent you a few lines some months past respecting a tract of land lying north of the valley—3,000 acres perhaps. I then requested you to say, as soon as you could ascertain the worth it, to let

me know the lowest dollar that you are willing to take for it.
49 I made a trial to lot it off to the different persons interested, on account of outlet & timber, but I could not get anything from them that would justify me in making you an offer. I have since understood that some of them are trying for the land themselves. I have no certainty of the fact. I care but little who gets it if I can get a slip adjoining my fields for convenience. I have timber in abundance south of the road, & the land I think I described to you before. I would like to hear from you now verry much for two reasons: One is because there are grants given to settle it, & some are killing the timber very fast, the great object with me for the purchase, & no doubt but others will be allowed to stick in the steep hollows without adding to the value of the land; that is with you to judge. My next reason is that there is 500 acres of my father's estate joining me on the south offered me by one of the heirs, & if you are disposed to sell, I would take it as a favor if you write on the rec't of this that I may know how to square my actions in these affairs.

Very respectfully, yours,

JAMES FULKERSON.

Rose Hill post-office, Lee Co., Va.

Endorsed: Walnut Hill, Va., 28 Sept. Paid 10.

50 Doct. John Holmes, Schuylkill, 7th below Locust, Philadelphia. James Fulkerson, Jonesville, Va., 8th Sept., 1847 (J. F., No. 2). "Exhibit C C, October 20th, 1874, G. H.;" "Exhibit No. 5, January 18th, 1875, G. H." Henry Phillips, Jr., U. S. com'r. The certificate of Job Crabtree in the words and figures following:

LEE COUNTY, *To wit:*

I, Job Crabtree, deputy for Abraham Crabtree, sheriff of said county *county*, do certify that I have placed a tract of land, in the name of Samuel Young, for 3,000 acres, which was returned in the year 1834, not ascertainable, on the commissioner's books of said county of Lee, and taxed the damages thereon.

14 Dec'r, 1837.

JOB CRABTREE, *D. S.*,
For ABRAHAM CRABTREE, *S., L. C.*

Endorsed: (G), "A."

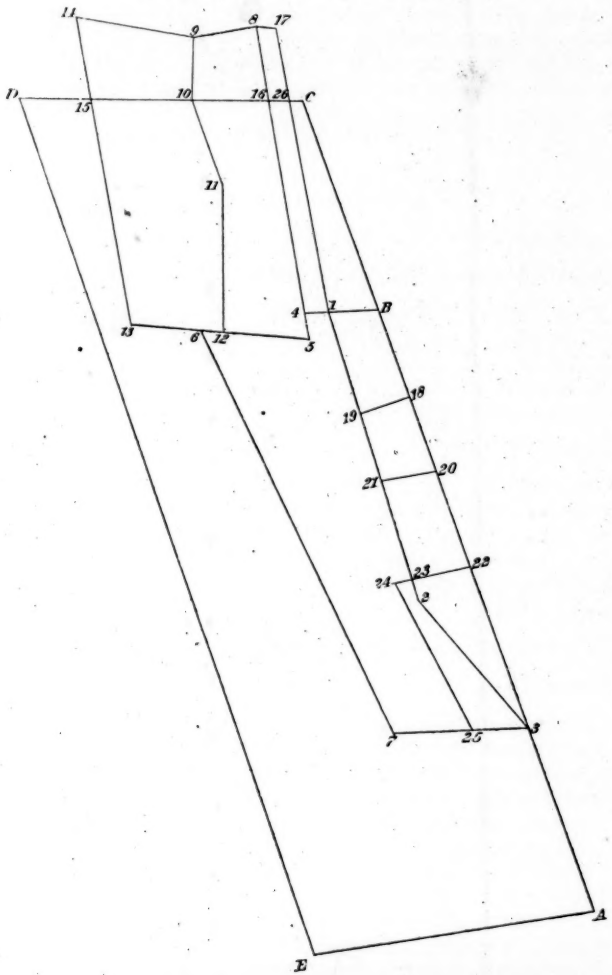
The court overrules the defendants' objections to reading said deed, and allowed the same to be read in evidence, to which ruling of the court the defendants except, and, to have the benefit of their exception, file this their bill of exceptions, and pray that it may be signed, sealed, and made a part of the record, which is done.

51 The plaintiffs then read in evidence all the above-named depositions, letters, and papers, which had been read to the court (except the certificate of Job Crabtree), and which are copied above. To the reading of said letters of Frederick D. Fulkerson and of James Fulkerson (copied above) the defendants objected, because their handwriting was not properly proven, and because the

said letters were not evidence against the defendants, or any of them; but the court overruled said objection, and allowed the same to be read, to which ruling of the court the defendants except, and, to save the benefit thereof, filed this their bill of exceptions, and pray that it may be signed, sealed, and made a part of the record, which is done.

They then read in evidence the report of Carr Bailey, the surveyor, in the words and figures following:

52 In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.



JOHN HOLMES' CHILDREN & HEIRS, Pl't'ffs,
against
JOHN F. HOWARD, Defendant. } In Ejectment.

SAME, Pl't'ffs,
against
W. WHITEHILL FULKERSON, MARGARET FULKERSON, & LEE S. FULKERSON, Defendants. } In Ejectment.

SAME, Pl't'ffs,
against
CHARLES DOUGHERTY, J. P. BEATY, N. E. BEATY; C. E. Baylor & Harriet, his Wife; J. N. Hatcher, & Emily, his Wife; Samuel M. Beaty, B. B. Beaty, Cornie J. Beaty, William H. Beaty, C. Brunk, Defendants. } In Ejectment.

Pursuant to an order of said court and to an agreement between John A. Campbell, counsel for the pl't'ffs, and Joseph T.
53 Campbell, counsel for the defendants, in the above-named causes, the undersigned, after giving the parties the required notice, went upon the lands in controversy on the 22 & 23 days of September, 1873, and surveyed and laid out the same as either party directed, and beg leave to report: Fig. A, B, C, D, E, A represents a 3,000-acre survey patented to Samuel Young, now claimed by the pl't'ffs, and which covers the lands in dispute; Fig. B, 1, 2, 3, B, represents a 242-acre survey made in the name of Peter Fulkerson and now claimed by part of the defendants, which is all in dispute; Fig. 1, 4, 5, 6, 7, 3, 2, 1 represents a 500-acre survey made in the name of James, F. D., & Elizabeth Fulkerson, now claimed by the defendants, W. Whitehill, Margaret & Lee S. Fulkerson, except a part of the same, which has been conveyed to C. Brunk; Fig. 3, 2, 23, 24, 25, 3, represents the part of said tract as conveyed to said Brunk, which is also in dispute; Fig. B, 18, 19, 1, B represents part of said 242-acre survey, now claimed by the defendants, W. Whitehill & Margaret Fulkerson, which is also in dispute; Fig. 18, 20, 21, 19, 18 represents part of said 242-acre survey, now claimed by the defendant, Lee S. Fulkerson, which is also in dispute; Fig. 20, 22, 23, 21, 20 represents part of said 242-acre survey, now claimed by the defendants, J. P. Beaty, N. E. Beaty, C. E. Baylor & Harriet, his wife, J. N. Hatcher & Emely, his wife, Samuel M. Beaty, B. B. Beaty, Cornie J. Beaty, and William H. Beaty, which is also in
54 dispute; Fig. 3, 2, 23, 22, 3 represents part of said 242-acre survey, now claimed by the defendant, Charles Dougherty, which is also in dispute; Fig. 8, 9, 10, 11, 12, 5, 8 represents a 308-acre survey made in the name of the defendant, John F. Howard, now claimed by him, part of which is in dispute, to wit: Fig. 10, 11, 12, 5, 16, 10, or that part embraced in the boundaries of the said 3,000-acre survey; Fig. 4, 8, 17, 1, 4 represents a 66-acre survey made in the name of the said defendant Howard and claimed by him, part of which is in dispute, to wit: Fig. 4, 16, 26, 1, 4; Fig. 9, 10, 11, 12, 13, 14, 9 represents a 374-acre survey made in the name

of the said defendant Howard, now claimed by him, part of which is in dispute, to wit: Fig. 10, 11, 12, 13, 15, 10, or that part of said survey lying within the boundaries of the said 3,000-acre survey.

I began the survey at a hickory and gum, gum gone, at the *the* point B, on the south side of the Poor Valley ridge, which point is admitted by the defendants, W. Whitehill & Lee S. Fulkerson, as a corner to Joseph Martin's land, now Fulkerson & others, and I ran with the call of the said 3,000-acre patent to Samuel Young reversed; S. 68 W., the greater part of the line towards the point A, which whole line I have ran on a previous occasion; and there is a marked poplar standing at said point, but the hickory is gone; which
55 point is admitted as another corner to said Martin's land. This line runs mostly through cleared land, and I, therefore, found no marked line-trees on said line—said line will not close on the degree called for in said patent, but will close on S. 66½ W. I then ran from the said point B, N. 65 E., 330 poles to a stake on a spur at the point C, on the south side of said Poor Valley ridge. I found no marked corner at this point, nor did I find any marked line-trees on said line. I ran this line with the closing line of William Priest's land, as called for in said Young's patent, but said line does not close on the degree called for in said Young's patent. The call is N. 77 E., 330 poles to a stake, making an angle of 12 degrees, and to run on the call of the patent would run through the said Priest's land. Then I ran with the call of said patent N. 5 W., 180 poles towards the point D to the point 10, which point 10 is on the south side of Cumberland Mountain, and is a corner to the defendant Howard's 308-acre survey. The 400 poles, as called for in said patent, will reach entirely across said Cumberland Mountain, and the point D is, therefore, in Kentucky. I found no marked line-trees on this line. I am fully satisfied with the surveying that I have done on said Young's survey's; that the same is fully identified, and is properly located in the diagram. I have connected
56 the defendant's different tracts mostly by actual survey, and I am fully satisfied that said tracts are properly connected and laid down in the diagram.

The reason that I am satisfied that the said Young's survey is established is, that if Joseph Martin and William Priest had surveys, and I have no doubt they had, Samuel Young certainly had a 3,000-acre survey adjoining theirs—for he called for beginning on Martin's corner and running with their line, andtwo of their corners, as called for in Young's survey, are still standing and admitted as corners.

All of which is respectfully submitted.

CARR BAILEY, *Surveyor.*

October 8th, 1873.

Surveyor's fees against pl't'ffs---- $31 00
Chain-carrier's " " ---- 4 00

Endorsed: John Holmes' children & heirs, pl't'ffs, against W. Whitehill, — Fulkerson, & others, def'ts. In ejectment.

In the Circuit Court of the United States for the Western District of Virginia, at Abingdon.

Plot & Report.

They then read in evidence certain agreed facts in the words and figures following:

HOLMES' HEIRS *vs.* FULKERSON'S *et als.*

57 It is admitted by the def'ts that Carr Bailey, if he were here, would swear just what he reports in his report of survey in this cause returned & filed; and we admit that the name of Job Crabtree to the certificate here filed, marked (A), is writ-en in the handwriting of Job Crabtree and is his handwriting, and the def'ts admit that they were in possession of the respective lots of land claimed by them, as shown in Carr Bailey's report, at the time they were served with the declaration & notice in ejectment; and the pl't'ffs admit that the names of Charles Dougherty & Thos. S. Gibson, obligors, in the two title bonds here filed, marked B & C, is the genuine handwriting of the said obligors; these admissions are not to be construed to include any admission or concession, except the facts expressly stated to be admitted.

May 26th, 1880.

WM. H. BURNS,
One of the Att'ys of Def'ts.
JOHN A. BUCHANAN,
Of Counsel for Def'ts.

The above agreement applies to all the ejectment cases, & the depositions of both parties are to be read, if desired, in all the cases.

WM. H. BURNS, JOHN A. BUCHANAN,
For Def'ts.
CAMPBELL & TRIGG, PATRICK HAGAN,
W. W. WALKER, *for Pl't'ffs.*

The plaintiffs then rested.

58 The defendants, to sustain the issue on their part, read in evidence a patent from the Commonwealth dated October 30th, 1838, in the words and figures following:

David Campbell, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

Know ye that in conformity with a survey made on the 6th day of September, one thousand eight hundred and thirty-seven, by virtue of land office treasury warrant No. 12721, there is granted by the said Commonwealth unto Peter Fulkerson, Sen'r, a certain tract or parcel of land containing two hundred and forty acres, situate in Lee county, on the headwaters of Martin's creek, and in the Poor Valley Ridge, beginning at a sugar-tree and three small gums on the south side of said ridge near the foot thereof; thence N. 8°, W. 65 poles, to three chestnut oaks on the top of said ridge; thence S. 68°, W. 443 poles, to a large chestnut black oak and dogwood on the

south side of said ridge near the top; thence S. 46°, W. 232 poles, to a white oak, beech, and poplar, corner to a survey of 440 acres of said Fulkerson, & with a line thereof N. 66°, E. 642 poles, to the beginning, with its appurtenances.

59 To have and to hold the said tract or parcel of land, with its appurtenances, to the said Peter Fulkerson and his heirs forever.

In witness whereof the said David Campbell, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonwealth to be affixed at Richmond on the 30th day of October, in the year of our Lord one thousand eight hundred and thirty-eight, and of the Commonwealth the 63rd.

DAVID CAMPBELL.

I, William P. M. Kellam, register of the Virginia land office, do certify that the foregoing is a true copy from the records of the said office. Given under my hand and seal of office this 15th day of June, A. D. 1872.

[SEAL.] WILLIAM P. M. KELLAM,
Reg. Va. L. Office.

Endorsed: Peter Fulkerson, Sen'r, 240 acres, Lee county. Copy of grant. 1872, July 1st, received and filed.

They then read a patent for 500 acres, dated October 31st, 1846, in the words and figures following:

William Smith, Esquire, Governor of the Commonwealth of Virginia, to all to whom these presents shall come, Greeting:

60 Know ye, that in conformity with a survey made on the 15th day of July, one thousand eight hundred and forty-five, by virtue of land office treasury warrant, No. 15664, there is granted by the said Commonwealth unto James Fulkerson, Frederick D. Fulkerson, and Elizabeth Fulkerson a certain tract or parcel of land, containing five hundred acres, lying and being in the county of Lee, on the waters of Martin's creek, and bounded as follows, viz: Beginning at the chestnut oaks on the top of the Poor Valley bridge, a corner to a 242-acre survey of Peter Fulkerson, Sen'r, then N. 8° W. 30 poles to a stake in a line of a 308-acre survey of John F. Howard's, and with lines thereof S. 72° W. 40 poles to four chestnuts, two black oaks, a gum, and chestnut oak on the N. side of the ridge; then north 150 poles, passing Howard's corner, to a stake on the top of Cumberland mountain; then S. 60° W. 645 poles to a stake on the south side of the mountain, a corner to a 322-acre survey of John Fulkerson, & with a line thereof S. 8° E. 163 poles to a white oak, beech, and poplar, corner to the lands of John Fulkerson and Peter Fulkerson, Sr., and with the lines of the latter N. 46° E. 232 poles to a large chestnut, black oak, & dogwood on the south side of said ridge, near the top; then N. 68° E. 443 poles to the beginning, with its appurtenances; to have and to

hold the said tract or parcel of land, with its appurtenances,
61 to the said James, Frederick D., & Elizabeth Fulkerson, and their heirs, forever.

In witness whereof the said William Smith, Esquire, Governor of the Commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said Commonweath to be affixed at Richmond, on the 31st day of October, in the year of our Lord one thousand eight hundred and forty-six and of the Commonwealth the seventy-first.

WM. SMITH.

I, William P. M. Kellam, register of the Virginia land office, do certify that the foregoing is a true copy from the records of said office. Given under my hand and seal of office, at Richmond, this the 18th day of June, A. D. 1872.

[SEAL.] WILLIAM P. M. KELLAM,
Reg. Va. L. Office.

Endorsed: James Fulkersen & others. 500 acres. Lee county. Copy of grant. 1872, July 1st. Received and filed partition deeds between Ellenor S. M. Fulkerson, James Fulkerson Frederick D. Fulkerson, Leonidas S. Fulkerson, &c.; dated October 27th, 1856, in the words and figures following:

This deed, made this 27th day of August, in the year 1856, between James Fulkerson, Leonidas Scruggs Fulkerson, and Frederick D. Fulkerson, of the first part, & Ellenor S. M. Fulkerson, Syl-
62 vester Hensley, & Maria S., his wife; William Whitehill Fulkerson, & Margaret Elizabeth Fulkerson, of the county of Lee, in Virginia, witnesseth: That the said parties of the first part, being joint owners with the parties of the second part of a tract of land containing two hundred and forty-two acres, lying in the said county of Lee and granted by the Commonwealth of Virginia to Peter Fulkerson by patent dated on the 30th day of October, 1838, & they have agreed to make partition thereof among those entitled: In consideration of the premises, and in further consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, the said parties of the first part do hereby grant, bargain, and convey to the said Ellenor S. M. Fulkerson, during her life or widowhood, and to the said Sylvester & Maria S., his wife; William Whitehill and Margaret Elizabeth, in fee-simple, after the termination of the widowhood or the death of the said Ellenor, a certain tract or parcel of land lying and being in the said county, adjoining the land now belonging to the said parties of the second part, being their part of the said tract of two hundred and forty-two acres, to be held by them in severalty, and bounded as follows: Beginning at three chestnut oaks on the top of the Poor Valley ridge, a corner of the said tract of 242 acres; thence with a line
63 thereof S. 8° E. 65 poles to three small gums and a sugar tree (two of the gums now standing), the beginning corner of said tract; thence with the closing line of said tract & with the closing line of the old tract formerly belonging to Peter Fulkerson S. 66½°

W. to a stake, a corner to the land conveyed by Peter Fulkerson in his lifetime to the widow & heirs of John W. Fulkerson; thence N. 25° W. 70 poles to a rock and three dogwoods, marked as pointers; thence with the line of the said 242-acre tract to the beginning, with all the appurtenances. And the said parties of the first part do hereby convenant, for themselves and for their heirs with the said parties of the second part that they will and do hereby warrant specially the land hereby conveyed.

Witness the following signatures and seals:

F. D. FULKERSON. [SEAL.]
LEE S. FULKERSON. [SEAL.]
JAMES FULKERSON. [SEAL.]

Endorsed: Ellenor S. M. Fulkerson from F. D. Fulkerson & others. Deed recorded in book No. 13, page 103. "3."

This deed, made this 27th day of August, in the year 1856, between Ellenor S. M. Fulkerson, James Fulkerson, and Frederick D. Fulkerson, of the first part, and Leonidas Scruggs Fulkerson, of the second part, witnesseth: That whereas the said parties are
64 the joint owners, as tenants in common, of a tract of land containing two hundred and forty-two acres, lying and being in the county of Lee, in Virginia, granted by the Commonwealth of Virginia to Peter Fulkerson by patent dated on the 30th day of October, 1838, & conveyed by him to the said James Fulkerson, Leonidas S. Fulkerson, Frederick D. Fulkerson, & Peter Fulkerson, Jun'r, by deed dated 17th December, 1844, & duly recorded, and the said Peter Fulkerson, Jun'r, by his last will & testament devised his interest therein to the said Ellenor S. M. Fulkerson during her life or widowhood, and the parties having agreed to make partition thereof, so as to have their respective interests set apart & held by them in severalty: In consideration of the premises, & in further consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, the said parties do hereby grant and convey to the said Leonidas Scruggs Fulkerson a certain tract or parcel of land, being a part of the said tract of 242 acres which adjoins the tract conveyed by Peter Fulkerson to the widow and heirs of John W. Fulkerson, and bounded as follows: Beginning at a small white oak and two small hickories & a small black oak, marked as pointers, in a line of the said tract of 242 acres; thence S. 14° E. 70 poles to a stake in the back line of the old
65 tract formerly belonging to Peter Fulkerson and a corner of the said tract conveyed to the widow & heirs of John W. Fulkerson; thence N. 66½° E. with the back line of the said old tract, and also a line of the said 242 acres, 88 poles to a stake, corner to a tract of land conveyed by Peter Fulkerson to Peter Fulkerson, Jun'r; thence N. 25° W. 70 poles to a rock & three dogwoods marked as pointers, in a line of the said 242-acre tract; & thence with a line of the last-mentioned tract S. 68° W. to the beginning, with all the appurtenances. And the said parties of the first part, for themselves and their heirs do covenant with the said Leonidas

S. Fulkerson & his heirs that they will and do hereby warrant specially the land hereby conveyed.

Witness the following signatures and seals.

ELEANOR S. M. FULKERSON. [SEAL.]
F. D. FULKERSON. [SEAL.]
JAMES FULKERSON. [SEAL.]

Endorsed: Leonidas S. Fulkerson from Eleanor S. M. Fulkerson & others. Recorded in book No. 13, page 148. "4." Deed.

This deed, made this 27th day of August, in the year 1856, between Ellenor S. M. Fulkerson, Leonidas S. Fulkerson, & Frederick D. Fulkerson, of the first part, and James Fulkerson, of the second part,
66 witnesseth: That whereas the parties hereto own, as tenants in common, a certain tract or parcel of land lying in Lee county, in Virginia, containing 242 acres, which was granted originally by the Commonwealth of Virginia to Peter Fulkerson, by patent*ed* dated on the 30th day of October, 1838, and adjoining the old land of the said Peter Fulkerson, and they have agreed to make partition thereof, so that each may hold in severalty his interests therein, in consideration of the premises, and in further consideration of the sum of one dollar to them in hand paid, the receipt whereof is hereby acknowledged, the parties of the first part hereby grant and convey to the said James Fulkerson a certain tract or parcel of land, being a part of the said tract of 242 acres, and bounded as follows: Beginning at a small white oak and two small hickories and a black oak, marked as pointers in a line of the said tract; thence S. 14° E. 70 poles to a stake in the closing line of the said Peter Fulkerson's old tract and a corner of the tract conveyed by the said Peter Fulkerson to the widow and heirs of John W. Fulkerson; thence with the said closing line S. 66½° W. 166 poles to a stake in the same, a corner of the land conveyed by Peter Fulkerson to Frederick D. Fulkerson; thence N. 18° W. 79 poles to a small buckeye in the back line of the said tract of 242 acres & a chinquepin oak, marked as a pointer, & thence with the line of the said tract of 242 acres N. 68° E. to the begin-
67 ning, with all the appurtenances. And the said parties of the first part, for themselves and their heirs, do hereby covenant with the said James Fulkerson and his heirs that they will & do warrant specially the land hereby conveyed.

Witness the following signatures and seals.

ELEANOR S. M. FULKERSON. [SEAL.]
F. D. FULKERSON. [SEAL.]
LEE S. FULKERSON. [SEAL.]

Endorsed: James Fulkerson from Eleanor S. M. Fulkerson *et als.* "5." Copy of deed.

This deed, made this 27th day of August, in the year 1856, between Eleanor S. M. Fulkerson, Leonidas S. Fulkerson, James Fulkerson, & Frederick D. Fulkerson, of the first part, and Charles Daugherty, of Lee county, in Virginia, of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of fifty dol-

lars to them in hand paid, the receipt whereof is hereby acknowledged, have granted and sold and hereby convey to the said Charles Daugherty a certain tract or parcel of land lying and being in the said county of Lee, being the western part of a tract of two hundred & forty-two acres, granted by the Commonwealth of Virginia to Peter Fulkerson, by patent bearing date on the 30th day of October, 1838, and bounded as follows: Beginning at a white oak,
68 poplar, & beech, a corner of the said tract of 242 acres & a corner of the tract conveyed by Peter Fulkerson to the said Frederick D. Fulkerson; thence with a line of the said tract of 242 acres N. 46° E. 232 poles to a chestnut & dogwood on the south side of the Poor Valley ridge, near the top, another corner of said tract of 242 acres; thence, with another line of the last-mentioned tract, N. 68° E. 28 poles to a small buckeye in said line & a chinquepin oak, marked as a pointer; thence with James Fulkerson's line S. 18° E. 79 poles to a stake in the closing line of the old tract, formerly belonging to Peter Fulkerson & a corner of a tract conveyed by Peter Fulkerson to James Fulkerson; & thence with the closing line of said old tract & with a line of the said tract of 242 acres S. 86½° west to the beginning, with all the appurtenances. And the said parties of the first part, for themselves and their heirs, do covenant with the said Charles Daugherty and his heirs that they will, and do hereby, warrant specially the land hereby conveyed.

Witness the following signatures & seals.

ELEANOR S. M. FULKERSON. [SEAL.]
LEE S. FULKERSON. [SEAL.]
F. D. FULKERSON. [SEAL.]
JAMES FULKERSON. [SEAL.]

Endorsed: Charles Daugherty from Eleanor S. M. Fulkerson *et als.* Copy of deed. "6."

69 The will of Peter Fulkerson, Jr., probated June 20th, 1848, in the words and figures following:

I, Peter Fulkerson, Jr., of the county of Lee and State of Virginia, being in a lingering state of health, and as I think it right we should put our world-y affairs in order before we go hence, do now make this my last will and testament in manner & form as followeth: In the first place, after all my just debts and funeral expences are paid, I give and bequeath all my estate, both real and personal, to my dear beloved wife, Elenor Fulkerson, during her natural life or widowhood; t-at is to say, my plantation on which I now live; all my stock, such as horses, cattle, hogs, sheep, household and kitchen furniture, and every other species of property I may possess not herein mentioned. If my wife should again marry, it's my desire and will that my executors (who I shall hereafter mention) lay of- her thirds of s'd land and rent out the balance for the benefit of my children, or in any other way that they may consider will be conducive to the benefit and advantage to my s'd children. As my debts are few & small, and can be paid without administration, it's my desire that no expense be incurred except the recording of my will. I do hereby constitute and appoint my brothers, James &

Frederick Fulkerson, and my bro.-in-law, Nathaniel Ewing,
70 executors of this my last will and testament, confiding in their integrity to perform all things agreeably to the spirit and meaning of the same.

In testimony whereof I have hereunto set my hand — affixed my seal this 20th day of September, in the year of our Lord 1845.

PETER FULKERSON. [SEAL.]

Signed and sealed in the presence of—
JOHN F. HOWARD.
ELIZABETH C. M. ANDERSON.
JOHN FULKERSON.

VIRGINIA:

At a court of quarter sessions continued and held for Lee county, at the court-house thereof, on Tuesday the 20th day of June, 1848, the last will and testament of Peter Fulkerson, deceased, was proved by the oath of John F. Howard, a witness thereto, and the handwriting of John Fulkerson, another witness thereto, was proved by the oath of Peter C. Johnston and John W. S. Morrison, and is ordered to be recorded; and the executors named in the said will having refused to take upon themselves the burthen of the execution thereof, on the motion of Elenor S. M. Fulkerson, who made oath, together with Claiborn Anderson and John F. Howard, her securities, entered into and acknowledged a bond in the penalty of $500, conditioned as the law directs, certificate is granted the
71 said Elenor S. M. Fulkerson for obtaining letters of administration on the said decedent's estate, with his will aforesaid annexed in true form.

Copie.

Teste: JAMES W. ORR, *Clerk.*

Endorsed: Peter Fulkerson, Jr. Copy of last will & testament. Fee for copy, 50 c'ts.

Deed from James Fulkerson to Thomas S. Gibson, dated October 11th, 1856, in the words and figures following:

This deed made this 11th day of October, in the year 1856, between James Fulkerson and Frances J. Fulkerson, his wife, of Claiborne county, in the State of Tennessee, of the first part, and Thomas S. Gibson, of Lee county, in the State of Virginia, of the second part, witnesseth: That the said James Fulkerson and Frances J., his wife, in consideration of the sum of eight thousand dollars in hand paid, or secured to be paid, do hereby grant, bargain, sell, and convey to the said Thomas S. Gibson a certain tract or parcel of land lying and being in the said county of Lee, on the waters of Martin's creek, the quantity whereof is not known accurately to the parties, the said Fulkerson and Frances J., his wife, only conveying to the said Gibson the land which is included in the boundaries described in this deed, & not binding themselves to any exact quantity, which
72 tract of land is bounded as follows: Beginning at a hickory in a line of the old tract which formerly belonged to Peter Ful-